

## **Chapter 8 - Required Sources for Supplies and Services**

### **Section 8.1 Issuance of Orders Under General Services Administration (GSA) Federal Supply Schedules (FSS)**

#### **8.1.1 PURPOSE**

The purpose of this section is to establish Agency procedures for acquiring supplies or services under General Services Administration (GSA) Federal Supply Schedule (FSS) contracts, and to emphasize the importance of following Federal procedures related to use of FSS contracts.

#### **8.1.2 BACKGROUND**

GSA directs and manages the FSS Program which provides agencies with a simplified process for obtaining commonly used commercial supplies and services at prices associated with volume buying. GSA Advantage is an online shopping and ordering system which may be used to place FSS orders. The GSA manages both the FSS Program and GSA Advantage.

Originally established to obtain common supply items, the schedule program has experienced tremendous growth with the addition of commercial services. While schedule orders still represent a small portion of EPA's contracting activity, the quantity and total dollar value of orders continues to steadily increase. Additionally, the complexity of the services acquired under schedules has increased. The increased volume and complexity of orders, coupled with the streamlined procurement process for FSS orders, necessitate increased emphasis on proper use of schedule contracts.

Additional information about FSS contracts and the program are located on the internet by accessing GSA's Advantage Website at: <http://www.fss.gsa.gov> or: <http://www.gsaAdvantage.gov>.

#### **8.1.3 AUTHORITY/APPLICABILITY**

The authority for this section is the Federal Acquisition Regulation (FAR) Part 38, which covers FSS Contracting, and FAR Subpart 8.4 which contains the policies and procedures for obtaining supplies and services under FSS.

This section applies to all contracting officers (CO) and program office users of FSS contracts. If program personnel do not utilize the services of an EPA CO, but instead, work directly with a GSA CO, the program official is responsible for providing the GSA CO with all applicable regulatory and statutory requirements for the order. (See FAR 8.404(b)) In addition, when a program office elects to deal directly with a GSA CO, the program official is responsible for ensuring that the GSA CO is made aware of the CO responsibilities outlined in this section. In making arrangements with GSA for reimbursement of payments on orders not placed by EPA COs, program offices should take every precaution to verify that the reimbursement mechanism is

considered proper by both EPA and GSA. Upon receipt of a copy of the Statement of Work (SOW), OAM contracting officers are available to assist program personnel in determining the regulatory and statutory requirements applicable to specific requirements.

#### **8.1.4 DEFINITIONS (Reserved)**

#### **8.1.5 POLICY**

Inasmuch as the FSS program is a streamlined procurement process offering benefits of shorter lead times and lower costs, it is EPA policy to use FSS contracts when appropriate for the requirement.

It is EPA policy to award competitively, to the greatest extent practicable. This policy extends to awards within the FSS program. (see 8.1.5.B.1, competition)

It is EPA policy to award performance-based service contracts. This policy extends to awards within the FSS program. (see CMM 37.1)

EPA offices are encouraged to use the services of the Office of Acquisition Management (OAM) and/or EPA regional contracting offices for placing and administering orders against GSA Schedules.

#### **A. ACQUISITION PLANNING:**

1. Planning: Acquisition planning requirements are set forth in FAR Part 7 and Chapter 7, Section 7.1 of the Contracts Management Manual (CMM), and are applicable to the use of Federal Supply Schedule orders. The term "solicitation," as used in CMM section 7.1 includes Requests for Quotes (RFQ). To the extent known, requirements to be acquired by use of GSA schedules shall be included in 1) the acquisition forecast requested annually by the Agency Competition Advocate (ACA) and 2) the yearly update to the three-year acquisition plan required by CMM Chapter 7.

The requirements for bundling reviews (see FAR Part 7, and CMM Chapter 7) apply to requirements acquired against FSS.

The requirements for developing Independent Government Cost Estimates (IGCE) (see CMM 7.3.5.7) apply to orders against GSA Schedules that have a potential value in excess of the simplified acquisition threshold.

2. Use of Schedule Contracts: The FSS program is designed to streamline acquisition of commercial supplies and services. While the decision to acquire standard supplies via a schedule order is almost always appropriate, the decision to acquire services against a schedule requires greater consideration. Routine commercial services, such as maintenance, landscaping, and data entry are generally appropriate for schedule orders. Complex commercial services, while

qualifying for purchase under a schedule, may be more efficiently acquired under an alternate contract vehicle. Examples of complex commercial services include design of an Information Technology (IT) system and environmental clean-up services. Inasmuch as FSS Contracts are strictly for the acquisition of commercial supplies and services, non-commercial services, which include services unique to the Government, are not to be acquired through a schedule order.

3. Contracting Officer and Project Officer Roles and Responsibilities: Orders against FSS must be placed by a CO. EPA offices are encouraged to utilize the services of an OAM or EPA Regional CO to place orders. The schedule program also permits Agency requiring offices to use the services of a GSA CO. When a program office elects to work through a GSA CO, the program official is responsible for providing the GSA CO with all applicable regulatory and statutory requirements for the order. (See FAR 8.404(b)) In addition, when a program office elects to deal directly with a GSA CO, the program official is responsible for ensuring that the GSA CO is made aware of the CO responsibilities outlined in this section. In making arrangements with GSA for reimbursement of payments on orders not placed by EPA COs, program offices should take every precaution to verify that the reimbursement mechanism is considered proper by both EPA and GSA. Project officers, utilizing the services of a GSA CO, are required to take the GSA on-line training on use of FSS. The training may be found at: <http://fsstraining.gsa.gov>.

4. Market Research: FAR Part 10 addresses the conduct of market research. Agencies must conduct market research appropriate to the circumstances before developing new requirements to determine if there are sources capable of satisfying the Agency's requirements and to determine if commercial items are available or, if not available, nondevelopmental items are available that meet the Agency's requirements. The FSS price lists and catalogs, and the information available through GSA Advantage!, are excellent sources of market information for commercial items, and Agency personnel are encouraged to utilize the schedules for this purpose. (See FAR 8.405-1(c)) However, during market research, it is important to request only the minimum information necessary. Market research should not be used to solicit potential sources, or to obtain quotes from vendors.

**Market research must be well documented and the results retained in the official contract file.**

Program personnel should submit the results of their market research to the CO with their procurement request. COs should consider the market research information, but may solicit additional sources not identified during market research. Market research results shall not restrict competition for an FSS order.

## **B. PRE-AWARD CONSIDERATIONS**

1. Competition on FSS Orders: All schedule orders are considered competitive when the procedures in FAR 8.405 are followed. For services requiring a statement of work, those procedures require the solicitation of at least three schedule contractors. Nonetheless, the benefits to be derived from competitive market forces are well established, and it is in the Government's best interest to seek the maximum practicable competition, depending upon the

circumstances of the requirement. Following are some recommended measures for increasing the competition on individual orders under FSS contracts. COs are encouraged to utilize these competitive measures, as appropriate, for the requirement.

a. Although FAR and the GSA schedule program require the solicitation of at least three schedule contractors on orders requiring statements of work which are expected to exceed the micropurchase threshold, it is recommended that, where practicable, more than three be solicited. Soliciting more than three increases the chances of receiving multiple competing proposals, thereby increasing the pool of potential awardees, and often times resulting in better pricing.

GSA's eBuy tool, which essentially provides an agency's requirements to all eligible schedule holders, is an excellent way to easily solicit a large number of potential offerors; therefore, use of this tool is recommended for orders expected to exceed \$25,000. Additional information on eBuy may be found at: <http://www.ebuy.gsa.gov>.

b. Competition may also be enhanced when solicitations are open to quotes over a longer period of time. Reasonable response times must be established to help assure that competing quotes are received. COs are encouraged to allow the optimum amount of time for receipt of quotes, consistent with the complexity of the requirement and the requiring activities' needs. Ten business days may be used as a guideline for setting solicitation periods. Simple quotes for standard supplies may require less time, while complex quotes for services may require longer time.

If services are required, and especially if the services are complex, the time needed for a prospective offeror to prepare a quote will be considerably longer. COs must weigh the complexity of the requirement and the program needs, with the potential benefits of increased competition, to determine the appropriate length of time to allow for receipt of quotes.

**It is important to document the file with the rationale for establishing the time period for receipt of quotes.** Because the complexity of supplies and services under schedule orders can vary greatly, as can the circumstances particular to a specific requirement, firm guidelines for optimum solicitation periods are difficult. A well documented file, with rationale based on sound reasoning and good business practices, will serve as evidence that the solicitation time frame was appropriately considered.

2. Small Business Considerations: In accordance with FAR 8.405-5, COs may consider socio economic status when identifying contractors for competition of an FSS order. At a minimum, COs should include at least one small business in the solicitation process. The firm may represent any of the small business categories, such as veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, women-owned small business, or small disadvantaged business.

Because schedule contractors often offer a variety of goods and services, it is important to ensure that the company is a small business in the industry category (NAICS code) applicable to the requirement. Contractors may self certify their business size. COs may also obtain additional information on business size at the FSS schedule website: <http://www.gsa.gov/fss> and in the Central Contractor Registration (CCR). Small businesses are those that meet the small business size standard for their industry at time of award of an order.

Although the mandatory preference programs of FAR Part 19 do not apply to FSS orders, COs are encouraged to provide preference to small businesses when a small business contractor can provide the supplies or services at the same price as competing offerors.

3. GSA Special Ordering Procedures: GSA may establish special ordering procedures applicable to one or more schedules. In such cases, the special ordering procedures take precedence over the ordering procedures in FAR 8.405 and this section. Please note, however, that if special ordering procedures conflict with Agency policy, the schedule should not be used.

4. Clauses and Provisions: All FSS orders shall include all appropriate Agency clauses and/or requirements. GSA recognizes that the FSS contracts, in general, lack specific order language or clauses to meet all department or agency requirements. GSA, therefore, generally permits the addition of provisions and clauses under FSS orders. Appropriate and pertinent EPA clauses or requirements must be included in FSS orders. Agency specific clauses may include, but are not limited to, the following EPA clauses: Conflict of Interests (EPAAR 1552.209-70, 71, 72, and 73), Acquisition and Use of Environmentally Preferable Products and Services (EP-S 97-1), Compliance with EPA Policies for Information Resources Management (EPAAR 1552.211-79), and Contractor Performance Evaluations (EPAAR 1552.209-76).

Occasionally, an FSS contract may specifically prohibit the ordering activity from adding any terms and conditions to an FSS order. For example, there are schedules with special ordering procedures which prohibit the addition of department or agency unique provisions and clauses. If specialized provisions are applicable to a required service (such as conflict of interest provisions for clean-up services or complex IT services) and the special ordering provisions do not permit the addition of clauses or provisions, a different contract vehicle must be used to acquire the services.

COs should utilize the FAR and the Integrated Contracts Management System (ICMS) to determine clauses appropriate for an FSS order. In accordance with FAR 8.404(b), program officials utilizing the services of a GSA CO must provide the GSA CO with all applicable EPA specific regulatory and statutory requirements. Upon receipt of a statement of work, OAM COs are available to assist program personnel in developing a list of Agency-specific requirements.

5. FSS Order Checklist: COs shall utilize an FSS order checklist, similar to the sample included as Appendix 8.1A, hereto, to ensure that all necessary steps are taken for proper award of an FSS order. The checklist shall be included in the official file as documentation of the award. It should be supplemented by narratives to support decisions made during the award process of an FSS order.

6. FAR Part 8 vs. FAR Part 15 Procedures - Proceed Cautiously: Generally, awards of orders against schedules are simplified/streamlined. The award process described in FAR Part 8 differs significantly from the award process described in FAR Part 15. Because COs are very familiar with the award procedures under FAR Part 15, they need to be diligent in assuring that they do not cross into FAR Part 15 activities when conducting a FAR Part 8 award. The Government Accountability Office (GAO) has evidenced in their rulings that, in those cases where FAR Part 15 award procedures have been utilized in the award of an FSS order, offerors are entitled to FAR Part 15 benefits and remedies, including the formal protest process. When an agency conducts a competition under FAR Part 8 (i.e. solicits vendor responses and uses those responses as a basis for a detailed technical evaluation and source selection) and if the award is protested, GAO will review the agency's actions to ensure that the evaluation was reasonable and consistent with the terms of the solicitation.

Awards against GSA schedules should be made without entering into negotiations (a FAR Part 15 concept) with offerors. FAR Part 8 encourages use of best value principals in making an award. In accordance with FAR Subpart 8.4, formal evaluation plans or scoring schemes are discouraged for FSS awards. Award should be based solely on a best value basis or on price. Use of any formal evaluation plan and/or negotiations may be construed as moving the evaluation from Part 8 to Part 15 of the FAR. In accordance with FAR 8.405-2(d) evaluation of an FSS quote should be limited to consideration of the level of effort and labor mix necessary to determine which quote represents the best value to the Government.

To ensure FAR Part 15 procedures are not invoked when not intended, the use of correct procurement terminology is critical. GAO rulings have evidenced that use of Part 15 terminology, such as "discussions," "communications," "negotiations," "technical proposals," "technical evaluation," etc, serves as an indicator that an agency is utilizing FAR Part 15 procedures rather than FAR Part 8 procedures. Again, such an action entitles an offeror to the benefits and remedies afforded by FAR Part 15. For example, use of the phrase "review of technical proposals" rather than "review of project plans," may unintentionally move the procurement from FAR Part 8 to FAR Part 15.

In addition, be aware that when entering into discussions or clarifications with an FSS contractor, the crossover into FAR Part 15 can easily happen; there are no clear lines of demarcation for when you leave FAR Part 8 and enter FAR Part 15. Consequently, the clarification/discussion distinction is not recommended and should not be used when considering quotes for FSS orders. Rather, RFQs for services requiring a statement of work should state that the Agency will solicit competitive quotes, contact each viable competitor, if necessary, to fully understand its quote, and make an award.

It is noted that the ordering procedures in FAR 8.405-2, Ordering Procedures for Services Requiring a Statement of Work, are closer to FAR Part 15 procedures than the other ordering procedures set forth in FAR Part 8. Therefore, special care to stay within the guidelines needs to be exercised when utilizing the procedures at FAR 8.405-2.

7. Price Reductions: All FSS schedules contain a 'maximum order threshold' which represents the quantity upon which a vendor's price has been established. If EPA is placing an order which exceeds the maximum order identified in the contractor's catalog or price list, the CO is required to seek price reductions from the published price. The contractor may offer a new lower price or decline the order within 5 working days. If a schedule holder offers a lower price, it is not required to extend the reduced prices to other Federal customers.

In addition to seeking price reductions on orders over the "maximum order threshold," COs are encouraged to seek price reductions on orders below the "maximum order threshold." Price reductions may be appropriate for various reasons, and especially when the supply or service is available elsewhere at a lower price. (see FAR 8.405-4)

8. FSS Reporting: All contract actions processed by OAM or Regional COs are required to be entered into Agency databases to ensure accurate Federal reporting. All FSS orders must be entered into either ICMS or the Simplified Purchase Electronic Data Interface (SPEDI) by the identical contract ID number given the FSS contract by GSA. A unique order number must be used for each Agency order issued under an FSS contract. ICMS and SPEDI will automatically reject any order number which has previously been used and request that the user enter a new order number.

Program offices are cautioned that orders placed directly with GSA COs will not automatically be recorded in OAM's automated contracting systems, and therefore, may not be reported in the Federal Procurement Data System-Next Generation (FPDS-NG) to Congress. As a consequence, EPA's total contracting dollars may be underreported. Likewise, EPA's awards to small and/or small disadvantaged businesses may be underreported. For these reasons, and because of the value added by EPA contracting personnel during award and administration, programs are encouraged to utilize OAM and Regional CO's services in placing schedule orders. If orders are placed directly with a GSA CO, the program office is responsible for ensuring that the GSA CO utilizes EPA's code (EP) and Agency identifier (6800) for Federal reporting.

9. Review Thresholds: For purposes of FSS orders, reviews, concurrences, and approvals required in connection with the acquisition process, as set forth in Unit 4 of the Acquisition Handbook, apply. In addition, the term "solicitation" as used in Unit 4, shall be considered to also include RFQs, as applicable for FSS orders.

10. Incremental Funding: As a general policy, FSS orders shall be funded in full. However, if special circumstances are present that permit incremental funding consistent with appropriations law, an FSS order may be incrementally funded as long as the CO documents the reasons why the order cannot be funded in full. When funds become available, they must be added to the order. In addition, appropriate clauses shall be included in the FSS order that identify the amount funded, the amount of funds needed to complete the order, and the limit of the Government's liability.

11. Orders Under the Micropurchase Threshold: For orders equal to or less than the micropurchase threshold, consistent with FAR 13.202(a)(2), EPA may obtain services or supplies

simply by placing an order with the FSS contractor of the Agency's choice. Purchase cards are generally used as the payment mechanism of orders at or below the micropurchase threshold. Although ordering officials are not required to solicit from a specific number of schedule contractors, they should attempt to distribute micropurchase orders among vendors.

12. Obtaining the Schedule: Prior to award of an FSS order, it is recommended that a copy of the signed FSS contract under which the order will be issued be obtained from the FSS vendor. Historically, the terms and conditions for many FSS contracts have changed after the initial award of the contract. Without a current copy of the FSS contract and its pricing information, it is difficult to properly award and administer. Therefore, having a current updated copy of the FSS contract will assist in the protection of the Agency's interests and aid in the administration of the order.

13. Sole Source Justifications: Sole source requirements under FSS contracts should be very rare, as the commercial nature of the supplies and services available almost always ensures multiple sources of supply. However, if a sole source requirement is identified, and it can be acquired under an FSS contract, a written sole source justification is required. The requirements for sole source justifications, and the approval levels, may be found at FAR 8.405-6. Please note that Agency approval levels apply to FSS orders; Agency approval levels for sole source justifications may be found in the Acquisition Handbook, Unit 4, Matrix item number 26.

It is important to ensure that all sole source justifications are well documented. Sole source justifications should be concise and specific; they should contain only the facts pertinent to the sole source decision, and present them in a straight-forward format. Samples of sole source justifications are available in the OAM e-library. A copy of all sole source justifications for FSS orders, regardless of approval level, shall be provided to the Agency Competition Advocate (ACA) for trend analysis purposes. Division Directors and Regional Contracting Officers Supervisors remain responsible for assuring the quality of sole source documentation.

14. Past Performance on FSS orders: COs may consider past performance in the award of an FSS order. (See FAR 8.405-1(c)(1) and 8.405-2(c)). Following completion of work under an FSS order that exceeds the simplified acquisition threshold, or annually if appropriate, the CO and the PO shall evaluate the contractor's performance and document the performance in the NIH past performance system.

15. File Documentation: The CO must document orders by identifying the contractor from whom the services or supplies were purchased, the services or supplies purchased, and the amount paid. If other than a firm-fixed price order is placed, the documentation should include the basis for the determination to use a labor-hour or time-and-materials order. For Agency requirements in excess of the micropurchase threshold, the order file should document the review of the contractors' quotes/project plans and the rationale for any trade-offs made in making the selection.

In addition, the completed FSS Order Checklist (Appendix 8.1A), or equivalent, should be filed in the official file along with any supporting justifications.

### C. ADMINISTRATION, OVERSIGHT, and CLOSE-OUT

1. Property: The CO is responsible for complying with the requirements of FAR Part 45 in justifying the provision of Government property under an FSS order, and for including the applicable Government property clause, including EPA class deviations to property clauses, in all orders where Government property is provided. If Government furnished property is provided to an FSS contractor (or is acquired under a cost reimbursable order), the property specialist, in support of the CO, is responsible for managing the property provisions, including annual reporting requirements. If a program is utilizing the services of a GSA CO, the program official is responsible for compliance with property management regulations, including annual reporting requirements. Property management regulations may be found at FAR Subpart 45.5 and CMM Chapter 45.

2. Quality Assurance Plan (QAP) Requirements: Each OAM Division and Regional Contracting Office shall include an activity in their Quality Assurance Plan to ensure quality control of orders against FSS contracts.

3. Audits and Closeouts: COs are responsible for close-out of all FSS orders. Generally, FSS contracts are fixed price contract vehicles and orders placed thereunder will also be for fixed price supplies and services. For those FSS orders which may be other than a fixed price, it is the CO's responsibility to administer the audit and/or closeout of the order and ensure any monies due the Agency are returned to the Agency. The property specialist, in support of the CO, is responsible for ensuring the return, or proper disposition, of all Government property. If an FSS order is issued by other than an EPA CO, the EPA program office that initiated the procurement is responsible for resolving and addressing any audit or closeout issues that may arise during or after performance. OAM COs and Property Specialists are available to assist the program in closeout, if requested.

## Appendix 8.1A FSS Order Checklist

<b>FSS Order Checklist</b>							
<b>DC N n um ber:</b>				<b>FS S O rder n um ber:</b>			
<b>Program Office: Orig inato r/Po int of C on tact: Ph on e nu m ber:</b>				<b>Mo dification nu m ber:</b>			
<b>Proje ct O fficer: Ph on e nu m ber:</b>				<b>Co ntrac t nu m ber: Contract Period of Performance:</b>			
<b>Co ntrac tor: Poin t of Co ntac t: Ph on e nu m ber:</b>				<b>Con tractor Address:</b>			
				<b>Am ou nt o f FS S O rder:</b>			
<b>Title of Acquisition:</b>				<b>FSS Period of Performance:</b>			
Tab No.	Document	ATT	N/A	Tab No.	Document	ATT	N/A
1	Pu rcha se R equ est			10	Correspondence		
2	State m en t of W ork			11	Technical Project Plans		
3	IGCE Incremental Funding Authorization			12	Qu otations  Num ber or quotes requested _____  Total number of quotes received and evaluated :		
4	A. Sole Source determination  B. AAS/PIN (see AH Unit 38 & CMM Chapter 7)  C . CO I (FA R P art 3 7 & CMM Chapter 9)  D. CBI (see CMM Chapter 3 and EPA O rder 1900.1A)  E. Determination for use of other than fixed-price						
5	Market Research Information			13	R e v i e w s		
6	Wage Determination or D&F for Waiver of Wage Determination			14	FSS Order File Documentation: D&Fs Abstract Price R easo nab lene ss W orksh eet Other supporting documentation		
7	EPA Form 1900-65, Designation and Appointment of Work Assignment Manager/Delivery Order Officer			15	Su cces sful Q uo te		
8	Advisory and Assistance Approval			16	Sou rce Selection m em o/Best Value determination		
9	RFQ Days RFQ open for receipt of quotes -----			17	FSS Order Modification		